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ABSTRACT

This paper addresses the state of the law of equal educational opportunity. Among the laws, acts, and statutes addressed are the following: the Fourteenth Amendment to the U.S. Constitution, the implementation of school desegregation in the North and South, the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Educational Opportunities Act of 1974, State and Local Fiscal Assistance Act of 1972, the Comprehensive Health Manpower Training Act of 1971. affirmative action, and the Equal Pay Act of 1963. There are some special problems that are also discussed, such as the following: inequitable systems of school financing, Federal tax benefits and schools that discriminate, Federal remedies against private schools, and discrimination against school personnel. (Author/AM)

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EQUAL EDUCATIONAL OPPORTUNITY
THE STATE OF THE LAW

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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The Place of Education in America

From its beginnings, our country has attached great importance to education. Education has been viewed as essential to the preservation of freedom and democracy and as an important way in which the promise of America--equality of opportunity--can be fulfilled. George Washington, in his Farewell Address, called upon his countrymen to promote educational institutions as an "object of primary importance." Thomas Jefferson regarded the diffusion of knowledge among the people as the best foundation for "the preservation of freedom, and happiness." Early legislation also reflected the importance attached to education. For example, the Northwest Ordinance of 1787 provided that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Education's role has been seen as going beyond mere enlightenment; it has also been regarded as a healer of great social divisions. Horace Mann defined education as the "great equalizer of the conditions of men--the balance wheel of the social machinery." His views reflected those of Jefferson, who said of education's role:

> The object is to bring into action the mass of talents which lies buried in poverty in every country for want of means of development, and thus give activity to a mass of mind, which in proportion to our population, shall be the double or treble of what it is in most countries. (Bell, 1973; p. 440)

The benefits of education, however, have not been accorded equally to all Americans. In the early days, educational opportunities were forbidden to slaves, and black Americans fared little better in the more enlightened North. As early as

1787, Boston Negroes petitioned the legislature to grant them educational facilities, since they "now receive no benefit from the free schools." Forty years later, the first Negro newspaper repeated this complaint:

> While the benevolence of the age has founded and endowed seminaries of Learning for all other classes and nations, we have to lament, that as yet, no door is open to receive the degraded children of Africa. Alone they have stood--alone they remain stationary; while charity extends the hands to all others. (Bell, 1973; p. 440)

When education was provided to blacks, it was on a separate basis--a practice that first received judicial sanction in the state of Massachusetts. Women, too, were denied adequate educational opportunities. Not until the opening of Oberlin in 1837 was it possible for a young woman to attend college in this country. (Harvard, our first college, was founded in 1636.) Historically, and today, traditional attitudes concerning appropriate sex roles have been mirrored in courses of study, textbooks, and counseling in school systems throughout the country. Other minorities, such as Mexican Americans and American Indians, also have been the victims of discriminatory educational practices.

The Fourteenth Amendment and Equal Educational Opportunity

The Fourteenth Amendment, adopted in 1868 following the Civil War, guarantees to all persons "the equal protection of the laws." As initially interpreted, however, this amendment did not insure that our educational institutions would provide equal opportunities. Although the amendment was construed as outlawing all state-imposed discriminations against the Negro race, it was not regarded as discrimination if Negroes were treated on a "separate-but-equal" basis. There was

limited compliance, moreover, with the "equal" part of the separate-but-equal standard. In 1915, for example, South Carolina was spending an average of $23.76 on the education of each white child and $2.91 on that of each black child. As late as 1931, six of the Southern states spent less than one third as much for black children as for whites, and ten years later this figure had risen to only 44 percent.

Some success was achieved in the courts in insuring that "separate" facilities were, in fact, equal. Courts found violations of the Fourteenth Amendment where it was shown that there were inequalities between black and white schools in buildings and other physical facilities, course offerings, length of school terms, transportation facilities, extracurricular activities, cafeteria facilities, and geographical conveniences. What the courts did was to engage in a sort of counting exercise--counting those things easiest to count, tangible things; in essence, the question boiled down to a matter of dollars and cents. Whether intangible factors--more difficult to measure than bricks and mortar--could be considered in determining if there had been a denial of equal educational opportunities was a question presented to the Supreme Court in 1950, in a case involving the University of Texas Law School (Sweatt v. Painter, 339 U.S. 629, 1950). The Court answered affirmatively and held that more than physical facilities needed to be taken into account in judging whether Texas was providing equal educational opportunity in separate facilities to black students. "What is more important," the Court stressed, is the fact that the University of Texas Law School "possesses to a far greater degree those qualities which are incapable of

objective measurement but which make for greatness in a law school." In a companion case (McLaurin v. Oklahoma State Regents, 339 U.S. 637,1950), the Court required that a black student admitted to a white graduate school be treated like all other students and not segregated within the school. Again, the Court relied upon intangible considerations, including the ability of the student "to engage in discussions and exchange views with other students."

By 1954, the Court had laid the groundwork for dealing with the application of the separate-but-equal doctrine to public elementary and secondary education. In Brown v. Board of Education the Court emphasized that the black and white schools involved were "equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors." The Court then noted that its decision could not, therefore, turn on a comparison of tangible factors, but that it would have to "look instead to the effect of segregation itself on public education." The Court described the significant role of public education today, and concluded that "[i]n these days, it is doubtful that any child may reasonable be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." And what did "equal terms" mean to the Court? The Court made its meaning clear:

> [I]n the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated ... are ... deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

The Supreme Court did not require immediate school desegregation. Rather, one year after the Brown decision it ruled that schools were required to make a "good faith" start to transform dual to unitary school systems "with all deliberate speed."

The Implementation of School Desegregation in the South

The Brown decision was met with widespread resistance. Various tactics were developed to avoid or delay school desegregation. Schools were closed, complicated pupil assignment plans were formulated, tuition grants were provided for education in "private schools," and students were assigned to schools on a "freedom of choice basis." Where desegregation plans were adopted, they generally were limited to a grade a year.

Gradually the courts moved against the barriers that had been erected to thwart Brown's promise of equal educational opportunity. In 1964, the Supreme Court ruled that "[t]he time for mere 'deliberate speed' has run out" and four years later the Court ordered desegregation to take place immediately. It stated that "[t]he burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." The Court described the constitutional objective as "a unitary, nonracial school system . . . a system without a 'white' school and a 'Negro' school, but just schools." A year later, the Court said that formerly dual school systems must operate so that no student is "effectively excluded from any school on the basis of race or color."

The Supreme Court also has expressed its views on the appropriate methods for desegregating schools, student transportation, and the place of the neighborhood

school. The Court spoke most fully about methods of desegregation in its unanimous 1971 decision, Swann v. Charlotte-Mecklenburg, North Carolina Board of Education. It outlined the following techniques as permissible and appropriate to desegregate schools:

> [a] A frank--and sometimes drastic--gerrymandering of school districts and attendance zones [resulting in zones] neither compact nor contiguous; indeed they may be on the opposite ends of the city.
>
> [b] "Pairing," "clustering," or "grouping" of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of white students to formerly all-Negro schools.

In Swann, the Court also dealt with school busing. It noted that the busing of students in "a normal and accepted tool of educational policy," and added that "[d]esegregation plans cannot be limited to the walk-in school." The Court further stated, "An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."

The busing question often is associated with the so-called neighborhood school. It is argued that children have a "right" to attend their neighborhood school. In Swann, however, the Court emphatically stated that, in reaching the objective of eliminating illegally segregated school systems, the neighborhood school or any other assignment plan "is not acceptable simply because it appears to be neutral." The Court went on to stress:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are

> not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconveniences cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

Limits have been placed on the desegregation process. For example, the Courts have been reluctant to require metropolitan desegregation unless there is some showing that school districts outside of a city have contributed to segregation within the city. The Supreme Court left standing a lower court decision refusing to require the city of Richmond to merge with two surrounding counties because there was no demonstration of actions by those counties circumventing the rights of Richmond residents.

The Implementation of School Desegregation in the North

Southern school segregation generally is classified as de jure while that in the North is called de factor. Since Brown, it has been clear that de jure segregation --deliberate, official separation of students on the basis of race--violates the Constitution. De facto segregation refers to racial separation which has come about "accidentally" and without official action or acquiescence. The Supreme Court never has ruled that de facto segregation is unconstitutional. In a number of cases, however, it has been proven that school segregation has resulted from action by school authorities that, although not based on segregation laws, has had similar effect and intent. In the Keyes v. School District No. 1, Denver (1973) case, for example, the Supreme Court found that Denver school authorities had engaged in deliberate segregation in a portion of the school system, that this

had had a "reciprocal" effect throughout the system, and that system-wide desegregation was required. The city of Boston is another example of a school system where the Court found that school authorities had engaged in deliberate segregatory practices. The Court required that a program be undertaken to undo the effects of those practices.

As in the South, metropolitan desegregation has been limited in the North. In Milliken v. Bradley (1974), involving the Detroit school system, the Supreme Court set guidelines for determining when desegregation would be required across school district lines:

> [I]t must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race.

The Supreme Court found that these guidelines were not met in Detroit; it upheld, however, a lower court order requiring inter-district desegregation in the Wilmington, Delaware metropolitan area.

We have progressed, therefore, to a point where the courts have relied on the Fourteenth Amendment's requirement of equal protection of the laws to nullify most forms of discrimination designed to deny equal educational opportunity. The principal struggle today is over the appropriate remedy once a discriminatory practice has been disclosed.

The Civil Rights Act of 1964

The decade after Brown saw many legal victories for the opponents of segregation

but little progress toward actual school desegregation. In 1963-64, only 1.2 percent of black students in the 11 Southern states attended schools with whites; the following year, the figure had increased to 2.2 percent. It was plain that the Fourteenth Amendment, standing alone, was not sufficient to bring about the desegregation of the schools, and Congress responded by passing the monumental Civil Rights Act of 1964. Two titles of the Act--Title IV and Title VI--had an immediate impact on school desegregation.

Title IV provides: (a) for technical assistance to applicant school boards in the preparation, adoption, and implementation of plans for desegregation of public schools; (b) for grants or contracts to institutes or university centers for training to improve the ability of teachers and other personnel to deal with special educational problems caused by desegregation; and (c) for grants to local school boards, upon their request, to pay for staff training to deal with problems accompanying desegregation and for the employment of desegregation specialists. In addition, Title IV adds muscle to the school desegregation effort. Prior to the passage of Title IV, only private citizens could sue to seek equal educational opportunity. Title IV authorizes the Attorney General to file suit to obtain school desegregation upon receiving a citizen complaint.

But the most far-reaching provision of the Civil Rights Act of 1964 is Title VI, where Congress acted to insure that no federal money is provided to any program that violates the constitutional rights of a citizen. Title VI requires all federal agencies to insure that programs receiving federal financial assistance are operated on a racially nondiscriminatory basis and to terminate assistance in the event of noncompliance. Its key provisions provide:

> Sec. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
>
> Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of Section 601 with respect to such program or activity.

Federal funds are the lifeblood of many school systems, and the possibility of losing these funds provided a great incentive to desegregate. The enforcement leverage of Title VI was increased greatly by the passage of the Elementary and Secondary Education Act (ESEA) of 1965. Under Title I of ESEA alone, school districts nationwide received $1.6 billion in Federal funds in fiscal year 1974.

The Department of Health, Education and Welfare (HEW) moved to implement Title VI by issuing a series of guidelines spelling out in detail what was required for effective school desegregation. HEW's policies covered areas such as school organization and operation, educational opportunity, education facilities and services, and professional staff. Three methods of enforcement have been pursued: voluntary negotiations, referral to the Department of Justice for possible litigation, and administrative enforcement leading to termination of federal financial assistance. The result of this enforcement effort was a significant increase in the extent of school desegregation. The percentage of black children attending school with whites in Southern states, for example, rose from 2.2 percent in 1964-65 to 13.9 percent in 1967-68. By 1972 this figure had risen to 46.3 percent. In the North and West, however, only 28.3 percent of black students attended majority white schools in 1972.

The character and rigor of HEW's enforcement efforts have not been consistent. In the mid-to-late 1960's HEW's reliance on the fund termination sanctions provided by Title VI was responsible, in large measure, for the dismantling of a number of dual elementary and secondary school systems in the South. Between 1966 and 1968, for example, 188 school districts, the bulk of which were in seven Southern states, had Federal funds terminated by HEW. Between 1968 and 1974, however, HEW's use of administrative sanctions significantly diminished, with such proceedings being initiated against only 46 school districts and with only 15 school districts being subject to federal fund termination during that period. HEW's failure to utilize sanctions led civil rights groups to sue to require HEW to invoke the fund termination provisions of Title VI where compliance was not forthcoming. In Adams v. Richardson (1973) a Federal district court found that HEW was derelict in the area of enforcement and there were a large number of school districts which should have had their federal funds terminated by HEW. HEW was ordered to commence enforcement procedures against certain districts, to investigate further other districts and to improve its enforcement and monitoring programs. Significant progress has been made in implementing the court's order.

HEW also has failed to proceed against school districts in the North and West that practice racial discrimination. A suit involving 33 such districts was brought by civil right groups. In July 1976, the Federal District Court for the District of Columbia found that HEW had failed to conclude protracted investigations in certain of these districts to determine whether they were in compliance

with Title VI and had failed to initiate enforcement proceedings against certain other of the districts. HEW was ordered to take appropriate action to carry out its statutory duties under Title VI (Brown v. Weinberger).

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972 in effect amends Title VI to include a prohibition of sex discrimination in education programs receiving federal financial assistance. Title IX provides:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

Although the act's coverage is very broad, it does not cover admissions to recipient preschools programs, elementary and secondary schools (except vocational schools), private undergraduate institutions, and those few public undergraduate educational institutions that have been traditionally and continually single sex. But despite the exemption of the admissions policies of elementary and secondary schools, such schools must treat all students equally, without discrimination based on sex (as defined in the HEW regulations), once they have admitted members of both sexes.

In July 1975, HEW's final regulations implementing Title IX became effective. The regulations define in detail what constitutes sex discrimination in an educational program or activity receiving federal financial assistance. The regulations cover three principal areas: (1) access to and participation in course offerings and extracurricular activities, including competitive athletics; (2) eligibility for receipt of benefits, services, and financial aid; and (3) use of facilities. Here is a

brief summary of some of the main features of the regulations.

Sex Education: Health education classes may not be offered separately on the basis of sex, but separate sessions for boys and girls in elementary and secondary schools may be held during times when the materials and discussions deal exclusively with human sexuality.

Physical Education: Sex-segregated physical education classes are prohibited except for classes involving contact sports such as wrestling, boxing, basketball, and football.

Athletics: The athletics regulations are quite complex but basically distinguish between contact and noncontact sports. The purpose of the regulations is to insure that women have equal access to athletic opportunities, either through separate teams or teams open to both sexes.

Organizations: Generally, a school receiving federal financial aid may not provide significant assistance to any organization, agency, or person that discriminates on the basis of sex.

Benefits, Services, and Financial Aid: Generally, a recipient of federal funds is prohibited from discriminating in making available any benefits, services, or financial aid. Benefits and services include medical and insurance policies and services for students, counseling, and assistance in obtaining employment. Financial aid includes scholarships, loans, grants-in-aid, and work study programs.

Facilities: Generally, all facilities must be available without discrimination on the basis of sex. The regulations, however, permit separate housing based on sex as well as separate locker rooms, toilets, and showers.

Curricular Materials: The regulations provide that they (the regulations) shall not be "interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials." While HEW recognizes that sex stereotyping in curricula is a serious problem, it also realizes than any effort at direct federal involvement would raise First Amendment issues. HEW does not want to be cast in the role of a federal censor.

Employment: Title IX also regulates the employment practices of educational programs and activities receiving federal financial assistance. All employees in all institutions are covered, both full-time and part-time, except those in religious schools, to the extent compliance would be inconsistent with the controlling religious tenets, and those in military schools. Employment coverage under the regulations generally follows the policies of the Equal Employment Opportunity Commission and the Department of Labor's Office of Federal Contract Compliance. Consequently, virtually all aspects of hiring and the employment relationship are covered. With respect to fringe benefits, employers must provide either equal contributions to or equal benefits under pension plans for male and female employees. Leave and fringe benefits must be offered to pregnant employees in the same manner as to temporarily disabled employees.

The enforcement of and sanctions under Title IX parallel Title VI. The government may delay new awards, revoke current awards, and debar institutions from eligibility for future awards. The Department of Justice also may bring suit at HEW's request.

The Equal Educational Opportunities Act of 1974

Congress's many attempts to curb school busing and to preserve the neighborhood

school culminated in the Equal Educational Opportunities Act of 1974. While the legislation sought to limit the role of the courts and HEW in ordering school busing, it also explicitly defined conduct which constituted a denial of equal educational opportunity. Among activities outlawed are: (1) deliberate segregation based on race, color, or national origin; (2) the failure of an educational agency to take affirmative steps to remove the vestiges of the dual school system; (3) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff; (4) certain assignments or transfers which increase segregation; and (5) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

The Comprehensive Health Manpower Training Act of 1971

The Comprehensive Health Manpower Training Act of 1971 amended Titles VII and VIII of the Public Health Service Act of 1944. The amendments prohibit the extension of federal support to any medical, health, or nursing program unless the institution providing the training submit, prior to the awarding of funds, satisfactory assurances that it will not discriminate on the basis of sex in the admission of individuals to its training programs. The enforcement of and sanctions under Titles VII and VIII parallel Title VI of the Civil Rights Act of 1964.

Executive Orders 11246 and 11375

Under Executive Orders 11246 and 11375, all institutions having contracts with the government must make two basic contractual commitments: (1) not to discriminate in employment on the basis of race, color, sex, religion, or national origin; and (2) to

take affirmative action to ensure that equal employment practices are followed at all facilities of the contractor. HEW has been delegated responsibility to enforce these Executive Orders with respect to all educational institutions with government contracts. In the event of noncompliance with the Executive Orders, new contracts may be delayed, current contracts revoked, and institutions debarred from eligibility for future contracts.

The Equal Employment Opportunity Act of 1972

The Equal Employment Opportunity Act of 1972 amended Title VII of the Civil Rights Act of 1964 to bring within its coverage state and local government employment, including employment by school systems. Disctiminatory employment practices in all conditions of employment are prohibited. This statute is enforced by the Equal Employment Opportunity Commission. Failure to comply may result in a law suit where courts are authorized to order the discontinuance of unlawfull practices, appropriate affirmative action, reinstatement of employees, and awarding of back pay.

The Equal Pay Act of 1963

The Equal Pay Act prohibits sex discrimination in salaries and most fringe benefits. Men and women working for the same institution under similar working conditions in jobs requiring substantially equivalent skill, effort, and responsibility must be paid equally. This statute is enforced by the Department of Labor and enforcement actions may result in remedies similar to those available under Title VII.

The State and Local Fiscal Assistance Act of 1972

The State and Local Fiscal Assistance Act of 1972, Title I of which provides for general revenue sharing, is designed to provide state and local governments with increased

financial resources to deal with community problems at the state and local level. Funds under this program are available for education-related expenses. These funds must be paid out without discrimination. Section 122(a) of the Revenue Sharing Act provides:

> No person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participating in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or part with [revenue sharing] funds.

The Revenue Sharing Act's equal opportunity provision parallels Title VI of the Civil Rights Act of 1964, but goes further in that it forbids discrimination based on sex and covers the employment practices of all recipient state and local agencies. Responsibility for assuring compliance with the nondiscrimination requirement of the Revenue Sharing Act is shared by the Treasury Department's Office of Revenue Sharing and the Department of Justice. The Office of Revenue Sharing is authorized to take administrative action to promote compliance and to terminate further payments where jurisdictions refuse to meet nondiscrimination standards in their use of revenue sharing funds. Judicial remedies may also be invoked by the Department of Justice on the basis of a referral from the Secretary of the Treasury, or through Justice's independent responsibility to act against recipients engaged in a "pattern or practice" of discrimination.

Insuring Equal Treatment without Regard to National Origin

In 1970, the report of the Select Committee on Equal Educational Opportunity, United States Senate (1972) concluded that some of the most dramatic, wholesale failures of our public school systems occur among members of language minorities. In a series of reports on the plight of Mexican American students, the U.S. Commission on Civil

Rights documented the extent to which those students were deprived of equal educational opportunities.

One weapon for preventing discrimination on the basis of national origin is the Fourteenth Amendment. The amendment's prohibition against classifications that invidiously discriminate has been invoked, for example, to prevent school segregation of Mexican American children.

Title VI of the Civil Rights Act of 1964 also is available to curb discrimination on the basis of national origin. HEW, in carrying out its responsibilities under Title VI, has acted to prevent discrimination against language minorities. In 1970, a memorandum was issued defining the obligations of school districts in relation to their treatment of language minority children. Four major requirements were outlined: (1) school districts must take affirmative steps to rectify a language deficiency whenever it excludes national-origin-minority-group children from effective participation in the educational program; (2) school districts must not assign pupils to emotionally or mentally retarded classes on the basis of deficient English skills; (3) ability grouping or teaching must be designed to increase language skills; and (4) school districts are responsible for notifying the parents of national-origin-minority-group children regarding school activities.

HEW's interpretation of the rights of language minorities was embraced by the Supreme Court in Lau v. Nichols (1974). The Court held that the failure to provide non-English-speaking Chinese children with special instruction denied them meaningful opportunity to participate in the educational program and violated Title VI. Lower courts have held that the denial of bilingual services violates the equal protection clause of the Fourteenth Amendment.

There also have been enacted a number of federal programs that are designed to overcome some of the special problems encountered by ethnic groups.

Title VII of ESEA provides for bilingual education programs:

> [It is] the policy of the United States in order to establish equal educational opportunity for all children (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, and (B) for that purpose, to provide financial assistance to local educational agencies, and to State educational agencies for certain purposes, in order to enable such local educational agencies to develop and carry out such programs.

Bilingual education involves the use of two languages, one of which is English, as mediums of instruction for the same pupil population. It encompasses part or all of the curriculum and includes the study of the history and culture associated with the mother tongue.

Funds provided for bilingual education, however, have not been adequate to meet present needs. Nor have adequate funds been appropriated under Title I of ESEA for the "English as a Second Language" (ESL) program. This program is designed to teach English language skills on a part-time basis for a limited number of hours. Its specific objective is to turn language minority students into confident speakers of the English language.

In 1972, Congress added to ESEA Title IX, which provides for ethnic heritage programs. This legislation was passed "in recognition of the principle that all persons in the educational institutions of the Nation should have an opportunity to learn about the differing and unique contributions to the national heritage made by each ethnic group." Under Title IX funds are provided to develop and disseminate curriculum

materials and to provide training for persons using the material.

American Indians also have been deprived of equal educational opportunity. A 1969 report of the Special Sub-committee on Indian Education, Committee on Labor and Public Welfare, United States Senate, concluded that "our Nation's policies and programs for educating American Indians are a national tragedy." In 1970, nearly 34 percent of American Indian students attended schools that were more than 50 percent American Indian. Funds to improve the quality of education received by the over 300,000 American Indian children attending public schools are provided principally by four federal programs.

The Johnson - O'Malley Act of 1934 provides funds to meet the educational needs of American Indian children. Although it was the Act's intent that funds be spent on programs specifically designed for American Indians, Johnson - O'Malley money has been traditionally used by school districts to supplement their general operating budgets, thus benefiting all their students. Recently revised Bureau of Indian Affairs' regulations, however, give priority to expenditures for special programs and place restrictions on the use of funds for operational expenses.

American Indian education funds also are available under Impact Aid laws enacted in 1950. These laws are designed to provide federal financial assistance to compensate public school systems for the loss of part of their tax base in school districts where there are federal installations, such as American Indian reservations. Public Law 815 provides funds for school construction and Public Law 874 provides general operating funds to school districts in lieu of taxes which would have been collected from district residents but for federal lands within the school district.

While it was the intention of Congress that impact aid funds be used for operating expenses and Johnson - O'Malley monies for special programs, often school districts use funds from both sources for general operating expenses.

A third source of funds for American Indian children is Title I of the Elementary and Secondary Education Act of 1965. Funds under Title I are intended to meet the special needs of economically and educationally deprived school children. They are supposed to provide services in addition to those normally provided from state and local funds. In many instances, however, it has been found that Title I funds have been misspent.

The most significant program of aid for American Indian education is the Indian Education Act of 1972. It provides federal aid directly to local school districts and to tribal educational institutions for meeting the "special educational needs" of Indian children and adults and for training teachers to aid in Indian education. Funds are to be used primarily for planning and developing new educational programs to meet American Indian students' specific needs-- such as programs emphasizing Indian culture and tradition--and to establish and maintain permanent programs for Indian education, including the acquisition of equipment and facilities. As of August 1975, approximately $97 million has been expended under this act. The act also makes specific provisions for American Indian community participation in the planning, operation and evaluation of funded programs and sets up a separate division in the Office of Education to superivse this and other Indian education programs, with the aid of an advisory council of Indians from across the United States.

The Office of Education recognizes the need for better coordination of programs

which provide educational services to Indian people and for tighter monitoring controls on such programs. The development of a comprehensive education plan has been undertaken.

Some Special Problems

Inequitable Systems of School Financing

Wide disparities in educational expenditures among school districts within the same state are commonplace in the United States. The basic reason for these disparities is that local funds, derived almost exclusively from the real property tax, provide more than one-half the revenue for elementary and secondary education in the nation as a whole. The amount that can be obtained through a property tax is a function of the tax rate employed and the value of the property taxed. Use of the property tax, therefore, subjects educational financing to the massive disparities in tax base that characterize local governments throughout the United States. Consequently, the richer a district, the less severely it needs to tax itself to raise funds. In other words, a person in a poor district must pay local taxes at a higher rate than a person in a rich district for the same or lower per pupil expenditures.

A further glaring inequity resulting from the current systems of school financing is that variations in per pupil expenditures among school districts tend to be inversely related to educational need. City students, with greater-than-average educational deficiencies, consistently have less money spent on their education and have higher pupil/teacher ratios than do their high-income counterparts in the favored schools of suburbia. Minority students tend to be concentrated in urban districts which, while they have a relatively high property tax valuation, suffer from what has

been termed "municipal overburden"--the competing needs for other basic services to aid an impoverished population. Most rural and suburban school districts do not have this "overburden" problem. The desire to increase the funding available for minority and low-income children has provided the primary impetus for change in the educational financing system.

The Supreme Court, in San Antonio Independent School District v. Rodriguez (1973), upheld the constitutionality of the traditional property-tax-based school finance systems. The Court found that educational finance systems that discriminated on the basis of wealth did not violate the Constitution and that the case before it did not present a situation where there was discrimination against a racial or ethnic minority. While this decision appears to foreclose a remedy in federal courts against inequitable school finance systems, state court remedies remain viable. State supreme courts in California, Connecticut, and New Jersey, for example, have relied on state constitutional provisions to strike down property-tax-based finance systems. The California Supreme Court's pioneering decision in Serrano v. Priest (1971) held that education is a "fundamental interest" entitled to constitutional protection. The court ruled that public school children have a right to have "the level of spending for their education unaffected by variations in the taxable wealth in their school district or their parents." The state, declared the courts must change its finance system to assure that the quality of education is no longer a function of wealth --other than the wealth of the state as a whole.

Federal Tax Benefits and Schools that Discriminate

The Internal Revenue Code grants tax exemptions to private schools and permits donors to deduct all contributions to such schools. This deduction is quite significant to

private schools, since most of them depend upon contributions for capital, particularly for construction and for initial operating expenses. In the late 1960's, the legality of this exemption was questioned with respect to the private segregated academies that were being established to subvert public school desegregation. (By the fall of 1969, an estimated 400,000 students were enrolled in segregated private schools in the South alone.) The continuation of these exemptions was challenged in court, and an injunction was obtained restraining the Commissioner of Internal Revenue from approving any pending or future applications for tax-exempt status. Shortly after the injunction was issued, the Internal Revenue Service (IRS) revised its policy and announced that it could "no longer legally justify allowing tax-exempt status to private schools which practice racial discrimination nor . . . treat gifts to such schools as charitable deductions for income tax purposes." The IRS issued a Revenue Ruling requiring private schools to adopt a racially nondiscriminatory policy to qualify for federal tax exemption. The ruling applies to all private elementary and secondary schools and all private colleges and universities and covers the programs and activities as well as the admission policies of the schools. The Revenue Ruling, however, does not apply to discrimination based on sex nor is faculty discrimination as such prohibited although it is regarded as indicative of a racially discriminatory policy to students.

IRS procedures impose a number of requirements on a school seeking tax exempt status. Such a school must a) include a statement in its charter, bylaws, or other governing instrument that it has a racially nondiscriminatory policy as to students, b) include a statement of its racially nondiscriminatory policy in all its brochures and catalogues as well as in all its advertising, c) make its racially nondiscriminatory policy known to

all segments of the general community served by the school, d) include in its application for exemption data on the racial composition of its student body and faculty, the racial composition of recipients of scholarships and loans, the names of incorporators, founders, board members and donors of land or buildings and a statement of whether any of the organizations or donors connected with the school have an objective of maintaining segregated public or private school education. Failure to comply with IRS regulations may result in the revocation of the tax-exempt status of the school.

The IRS rests its Revenue Ruling on the broad national policy opposing racial discrimination. It does not consider Title VI of the Civil Rights Act of 1964 as the primary source of its ruling, although it regards that law as persuasive evidence. A court has held, however, that tax exemptions are a form a federal financial assistance within the scope of Title VI, a position also taken by the U.S. Commission of Civil Rights.

Other Federal Remedies against Private Schools

Suits challenging discrimination by public elementary and secondary schools have been based on the Fourteenth Amendment. That amendment applies only to governmental action and does not provide a basis for litigation against a private school. Private schools, however, have been sued under 42 U.S.C. 1981--a provision of the Civil Rights Act of 1866 that grants the right to make contracts without discrimination. The Civil Rights Act of 1866 is based on the Thirteenth Amendment, which is applicable to all racial discrimination, whether private or governmental. The Supreme Court, on June 25, 1976, in the case of Runyon v. McCrary, ruled that the refusal of a private, commercially operated, nonsectarian school to admit a person because of race "amounts

to a classic violation of §1981." This court ruling could have a far-reaching impact in curbing racial discrimination by private schools.

Discrimination against School Personnel

A wide array of laws and regulations prohibits discrimination against faculty members and other school personnel. The Fourteenth Amendment, the constitutional provision on which the Brown decision rested, has been held equally applicable to faculty segregation. The courts have held that a part of the broad right of pupils to have an education free from any consideration of race is the right to freedom from racial discrimination in the selection of faculty. Desegregation decrees have incorporated provisions designed to eliminate faculty segregation. Courts have ordered that teachers be assigned so that the black-white faculty ratio in each school is substantially the same as the ratio in the system as a whole. Courts also have attempted to insure that where teachers are dismissed as part of the desegregation process, nondiscriminatory standards are applied. HEW, in carrying out its responsibility under Title VI of the Civil Rights Act of 1964, has taken the position that discrimination in the hiring, promotion, and other treatment of faculty has direct bearing on equal educational services and therefore is prohibited by Title VI. Moreover, as noted earlier, the Equal Educational Opportunities Act of 1974 defines faculty or staff discrimination as a denial of equal educational opportunity.

Employment discrimination against faculty and other school personnel also is prohibited by Title VII of the Civil Rights Act of 1964--the fair employment provision. That provision bans discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex. Further, the Equal Pay Act of 1963 forbids

discrimination in salaries (including almost all fringe benefits) on the basis of sex. Finally, the extent to which standard test scores can be used in connection with the hiring, termination, promotion, and placement of teachers currently is in litigation in the courts. In general, the courts have invalidated tests that had a racially discriminatory impact and could not be shown to be job related.

Conclusion

The Supreme Court's decision in Brown v. Board of Education is viewed by many as the beginning of America's Second Reconstruction. At last, black Americans were to be accorded the rights guaranteed them by the post Civil War constitutional amendments and statutes. It is especially noteworthy that this renewed battle for equality began in the field of education. Civil rights strategists recognized that it was more likely that wide-spread public consensus could be achieved with respect to assuring equality in the area of education than with respect to the areas of housing or employment--or even voting. Only the most die-hard reactionary could argue that it was justified to deprive an American child of a quality education because of his or her color.

This regard for the primacy of education has resulted in court decisions and statutes that seek to assure all children equal rights to education. And as black Americans have struggled for their rights, so have other groups. Women, Chicanos, Puerto Ricans, American Indians, and the mentally and physically handicapped have pressed their demands for equal treatment in the classroom. Today we have an arsenal of court precedents, statutes and government regulations which, if property enforced, will insure that our school houses are free from invidious discrimination.

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